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On

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,119	01/08/2002	Kim R. Harmon	ZIM0070/ZM04	4480
832	7590	03/04/2004	EXAMINER	
BAKER & DANIELS 111 E. WAYNE STREET SUITE 800 FORT WAYNE, IN 46802			MAIORINO, ROZ	
		ART UNIT	PAPER NUMBER	
		3763	8	
DATE MAILED: 03/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/041,119	HARMON ET AL.
	Examiner Roz Maiorino	Art Unit 3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 February 2004.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2-9 and 11-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2-9, 11-21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 2-9,11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No.6129701 to Cimino and further in view of US Patent No.4445509 to Auth.

Cimino teaches a fitting adjacent 14 the proximal end, the fitting includes an irrigation port 16 and a suction port 11; an irrigation cannula 21 attached to said fitting in fluid communication with said irrigation port, said irrigation cannula defining an irrigation path from said proximal end of the debridement extension to the distal end of the debridement extension; a suction cannula 21 attached to said fitting in fluid communication with said suction port, said suction cannula defining a suction path from the proximal end of the debridement extension to the distal end of the debridement extension; and a debridement tip (figure 4-6) affixed to the distal end of the said debridement extension, said debridement tip in fluid communication with both said irrigation and suction paths, the debridement tip having a plurality of irrigation apertures 29 and 30 spaced about the periphery of the debridement tip, whereby an amount of irrigation fluid in the irrigation path traverses the irrigation apertures and exits the debridement tip. The irrigation cannula comprises an inner cannula 20 and the said

suction cannula comprises an outer cannula 21 surrounding the inner cannula. (Figure 6) The irrigation apertures are spaced about the periphery of the tip in ninety-degree intervals (figure 5).

Cimino however does not teach an external flute as described by the applicant. Auth teaches an external flute.

Therefore it would have been an obvious to one having ordinarily skill in the art to have added external flutes to Cimino's apparatus, because according to Auth the external flutes allow for plaque and other obstructions to be removed from organic structures without damage to normal tissue.

### ***Response to Arguments***

2. Applicant's arguments filed 2-9-2004 have been fully considered but they are not persuasive.

a. Applicant alleges Cimino teaches removal of soft tissue and Auth teaches preserving soft tissue and hence no motivation exists to combine the two references. However Cimino teaches removal of fragmental tissue and not necessary soft tissue as the applicant has alleged. (Abstract of Cimino, lines 1-3), similarly Auth teaches removal of abnormal deposits which may or may not include tissue. (Abstract of Auth, lines 1-3). Therefore both reference are in analogous art and do have the same overall purpose. Hence applicant argument is not persuasive.

b. Applicant claims Cimino does not teach a debridement tip including a plurality of irrigation apertures spaced about the periphery of the debridement tip

at 90 degree intervals. However as stated in the office action in Paper NO.5, figure 5 of Cimino teaches the above limitation. The applicant has not explained why he disagrees with the rejection; therefore the examiner again will point to figure 5 of Cimino.

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Maiorino whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RM



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